

Part 7 INVESTIGATION PROCESSES

Chapter 41: The Breakdown of Compliance

As explained in Chapter 40, the Committee encountered significant problems in enforcing outstanding subpoenas to certain Republican groups beginning in April 1997. Nevertheless, in May and late July the Democratic members of the Committee requested that several other subpoenas be issued to tax-exempt entities. On May 23, the Committee issued a subpoena to the AFL-CIO and on July 30, the Committee issued 26 subpoenas to other independent organizations. Many of these organizations did not comply with the Committee's subpoenas, primarily objecting to their broad scope.

FINDING

The Committee's failure to pursue enforcement actions against those who failed to comply with the Committee's subpoenas threatens to have lasting impact on the success and credibility of future Senate investigations.

The Committee's acceptance of the refusal of groups and individuals to comply with the Committee's subpoenas will make objective investigations in the future much more difficult by emboldening persons and entities to ignore future Senate subpoenas.

INTRODUCTION

As the investigation progressed during the summer of 1997, the Republican National Committee, Triad and its affiliates, Americans for Tax Reform, and the National Policy Forum all of which received subpoenas in April 1997 continued to seriously impede the Committee's requests for information. Despite the problems the Minority encountered in enforcing existing subpoenas to these groups, the Democratic members of the Committee requested that several other subpoenas be issued to tax-exempt entities. Some of the requests for subpoenas had originally been made in April, when for example, the Minority first proposed issuing a subpoena to the Christian Coalition. On May 23, the Committee issued a subpoena to the AFL-CIO and on July 30, the Minority was able to secure subpoenas long-sought for 13 entities. These were issued in conjunction with 12 proposed by the Majority, bringing to 26 the total of new subpoenas issued primarily to tax-exempt entities.¹

Each subpoena required the organization to produce a significant amount of information to the Committee, including organizational, financial, and political records created during the 1996 election cycle. The subpoenas also demanded sensitive information such as membership lists, contributions, and lists of political donations. Even where the demands fell within the scope of the Committee's mandate, the organizations complained that complying with the subpoenas would have been very time-consuming and exorbitantly expensive.

The Majority and the Minority had agreed earlier in the investigation to provide

supporting information for each of the subpoenas they requested. As was the case with the subpoenas issued in April, the Minority was primarily interested in investigating whether any of the entities in question misused their tax-exempt status, illegally coordinated issue advertising with the GOP, or improperly used voter guides. The Majority's rationale for many of its subpoenas was less obvious, but the main goal was clearly to isolate information relating to any participation in a coordinated campaign strategy to advocate a Democratic victory in the elections.

Subpoena compliance became a contentious issue during the hearings. Many of the organizations lodged a number of objections relating to the scope of the Committee's subpoenas and the type of information demanded. As earlier undertaken by the National Policy Forum and other Republican entities, several entities subpoenaed later joined together in refusing to provide documents to the Committee without a narrowing of the subpoenas' scope.² Eventually the entire subpoena process broke down, and virtually none of these entities fully complied with a subpoena. Some, like the Christian Coalition, showed nothing less than contempt for the Committee when they refused to provide copies of voter guides even though millions of copies had been distributed to the public.³

This chapter provides background information on the subpoenaed groups, the allegations against them, and the degree to which they complied with the Committee's document, deposition, and hearing subpoenas. Since circumstances surrounding the AFL-CIO subpoena distinguish it from the rest of the entities, it is addressed first.

Allegations against the AFL-CIO are discussed in Chapter 19 of this Minority Report. The fundamental allegations against the AFL-CIO were (1) that by spending a substantial amount of money on issue ads and other advocacy activities in 1996, the organization had an impermissible effect on the 1996 federal elections and (2) that the organization improperly coordinated its issue ads with the White House and the DNC.

On May 30, the Committee served a 17-page subpoena to the AFL-CIO with a June 15 return date for all materials described in the subpoena. The subpoena requested an inordinate amount of information from the organization. The Committee requested all information from 46 different categories, including:

- o all documentation regarding the operating structure of the AFL-CIO;
- o all documents filed by the AFL-CIO with the U.S. Department of Labor;
- o all financial records of the organization, including audits performed by outside groups;
- o all employee information relating to political activities;

- o membership lists of the organization;
- o all telephone records for which AFL-CIO paid the bills;
- o all information regarding any contribution of funds or services received or made by the AFL-CIO with respect to federal political activity; and
- o all documents responsive to political activity between the AFL-CIO and several specific political entities, including the DNC, Clinton/Gore, the National Education Association and EMILY's List.⁴

After voicing objections about the breadth and constitutional implications of the subpoena, the AFL-CIO met with both Majority and Minority counsels in June to discuss the matter. Although the Majority agreed to allow for a rolling production of documents, it would not agree to address the constitutional issues raised by the AFL-CIO attorneys, nor would it agree to issue a new subpoena narrowing the breadth of the May 30 subpoena. In early August, the Majority submitted to the Minority a list of individuals the Majority intended to depose, including AFL-CIO President John Sweeney. The Committee, however, never contacted those individuals or scheduled the depositions.

On August 20, the AFL-CIO made a document production to the Committee, but informed Committee staff that problems with its subpoena would have to be resolved before it would produce additional documents. The AFL-CIO also submitted to the Committee a 75-page memorandum explaining the legal bases for its objection. The AFL-CIO thus became the third organization, after the National Policy Forum and Americans for Tax Reform, to challenge the Committee's subpoenas.⁵

In its memorandum, the AFL-CIO claimed that the document subpoena exceeded the scope of the Committee's mandate and, more importantly, infringed upon the organization's First Amendment rights. It also stated objections based on attorney-client privilege; individual privacy rights of employees, members, and others; and proprietary interests, such as the production of computer programs. The appendix to the AFL-CIO's "Memorandum of Points and Authorities in Support of AFL-CIO's Objections to Document Subpoena" contained a line-item list of objections to producing documents under each of the 46 categories of requested information. Fundamental to the objections was the assertion that the document subpoena was "overly broad, burdensome and oppressive" on several fronts, given the volume of the documents that the AFL-CIO would have had to produce in each area, sometimes hundreds of thousands of documents for a single category alone.⁶

The Chairman accused the AFL-CIO of obstructing the Committee's process by failing to provide all information requested by the subpoena. He also accused the organization of failing to provide witnesses to the Committee.⁷ In fact, the Majority staff failed to schedule these depositions. Although the AFL-CIO attorneys had been told by Majority staff that no employees

or officers of the federation would be deposed, late on the night of September 19 -- a Friday -- the Majority faxed to counsel for the AFL-CIO three deposition subpoenas for individuals associated with the AFL-CIO compelling them to testify the following week. The Majority did not provide notice to the Minority.⁸ The AFL-CIO attorneys informed the Majority that the witnesses were attending the AFL-CIO annual convention in Pittsburgh and would not be available on such short notice. Over the next four months of the investigation the Majority never contacted AFL-CIO counsel to reschedule the depositions. In September, the Majority did propose to the Minority to call AFL-CIO Secretary-Treasurer Richard Trumka as a hearing witness, but never did.

Even before the AFL-CIO filed its August 20 objection, several other groups that had been subpoenaed by the Committee on July 30 announced they would object to the Committee's subpoenas. On September 3, five organizations notified the Committee that they had adopted the position of the AFL-CIO and joined the Christian Coalition in signing a letter to the Committee objecting to the scope of their subpoenas. The letter asserted that the subpoenas exceeded the investigative authority of the Committee, demanded the production of sensitive documents protected under federal law due to their confidentiality, were "overly broad, unduly burdensome, and oppressive," and "violate[d] the First Amendment rights of the subject organizations and their members."⁹ The Chairman did not enforce the subpoenas.

ORGANIZATIONS SUGGESTED FOR SUBPOENA BY THE MINORITY

In the Minority's view, several organizations should have been the subjects of intensive investigation by the Committee, based on indications that these groups may have violated federal laws during the 1996 election cycle. A few of these organizations were subpoenaed, but the Committee did not further investigate the allegations against them.

These organizations, all subpoenaed on July 30, fell into three broad categories: (1) tax-exempt organizations associated with Republican Presidential candidates, (2) other tax-exempt groups and (3) private corporations linked to contribution laundering.

TAX-EXEMPT GROUPS LINKED TO PRESIDENTIAL CAMPAIGNS

- o Republican Exchange Satellite Network, a group associated with Lamar Alexander;
- o The Better America Foundation, which was connected to former Senator Bob Dole; and
- o The American Cause, which was linked to commentator Pat Buchanan.

These nonprofit organizations allegedly served as shadow campaign vehicles by providing crucial support to presidential campaigns. The organizations reportedly provided travel expenses,

polling research, speech-writing, and paid staff salaries for persons affiliated with, but not directly employed by, presidential campaigns. It is alleged, therefore, that these groups were almost entirely political in nature and yet failed to register with the FEC as political organizations.

Based on press accounts and other publicly available material, the Minority believes these entities may have engaged in some or all of the following prohibited partisan activities: participated in prohibited political campaign activities; failed to register as political committees; improperly coordinated expenditures; violated express advocacy requirements; improperly advocated for political candidates using independent expenditures; and circumvented federal limits on spending.

Republican Exchange Satellite Network and Lamar Alexander

The Republican Exchange Satellite Network (“RESN”) was a nonprofit organization established by Lamar Alexander, former Governor of Tennessee who served as President George Bush’s Secretary of Education. Alexander was a candidate for the Republican presidential nomination in 1996.

Alexander established RESN within days of leaving President Bush’s cabinet in January 1993. At least one press report contained allegations that RESN was used to pay for travel and other campaign-related activities on behalf of Alexander.¹⁰ RESN even employed a full-time organizer in Iowa and most of its employees were later listed as employed by the Alexander presidential campaign.¹¹ RESN was disbanded on March 9, 1995, a few weeks after Alexander launched his presidential campaign, and its assets were transferred to the National Policy Forum, an organization chaired by Haley Barbour, who was also chairman of the Republican National Committee.¹²

RESN ultimately raised over \$5.5 million during its short life, largely from major Alexander contributors.¹³ RESN’s activities and its funding sources prompted allegations that it was a campaign committee promoting Lamar Alexander’s presidential campaign.¹⁴ Alexander admitted he used this nonprofit organization “to develop a political and financial base ... and develop my message for where we’re going to take the country.”¹⁵

RESN made only a token production of documents by the return date which was supplemented by productions on November 4 and 6 -- 11 weeks beyond the required return date and after Chairman Thompson announced that the investigative phase of the Committee hearings had concluded.

The documents contained little information that was not publicly available. Included in the production were news articles, RESN publications, and corporate by-laws.

Better America Foundation and Bob Dole

The Better American Foundation (“BAF”) was established in 1993 by Senator Bob Dole,

who won the Republican Party's presidential nomination three years later. He disbanded BAF in June 1995, just as he was launching his official campaign organization. According to numerous published reports, BAF was actually a Dole campaign organization created and used to aid his 1996 presidential efforts. If true, this would constitute violations of federal campaign law.¹⁶ The allegations arose because:

(1) BAF's founding president, Jo-Anne Coe, had worked for Dole since 1967, served as executive director of his leadership PAC from 1988 to 1995, and was the national finance director for his 1996 presidential campaign;¹⁷

(2) BAF was initially run by Coe out of the offices of Dole's leadership PAC, Campaign America;¹⁸

(3) BAF commissioned several polls;¹⁹

(4) BAF paid for TV ads featuring Dole;²⁰ and

(5) BAF had regular contact with Dole campaign staff.²¹

These activities strongly suggest coordination of activities and funding between a nonprofit organization and a political candidate, which is prohibited by federal election law.²²

From 1993 to the end of 1994, the foundation raised over \$4.9 million from anonymous donors.²³ One of its brochures noted that, "there are no limits on the amounts an individual or corporation may contribute" and that "there is no requirement for public disclosure of contributors...and names of the donors will not be disclosed."²⁴ Later, after much press criticism, the foundation released a list of its donors.²⁵ It has also been alleged in the press that the foundation "provided a legal way for corporations to win favor with the Republican Party's leading presidential candidate without any limits on their contributions or detailed reporting requirements."²⁶

Dole closed the foundation only after it was revealed that the foundation spent more than \$1.5 million of its total \$4.9 million budget on expenditures which benefitted Dole's presidential effort, including an opinion poll, a TV commercial featuring Dole, and a fundraising brochure.²⁷

The Better America Foundation provided a small, incomplete production of documents on November 14, 12 weeks after the required due date and after Chairman Thompson announced that the investigative phase of the Committee's hearings had concluded.

The American Cause and Pat Buchanan

The American Cause was established by Pat Buchanan in 1993 and closed down in March 1995. It raised more than \$2 million, most of which was allegedly used to support Buchanan's presidential bid, which would violate federal campaign law. For example, American Cause

compiled a donor list which it rented to the Buchanan campaign, it rented office space from the campaign, and it provided “volunteers” to the campaign who were actually American Cause employees.²⁸ Further, numerous press reports contain allegations that Buchanan ran afoul of federal election funds by using \$8,000 of Federal matching money to pay for computers and other equipment for American Cause.²⁹

The American Cause provided a small, incomplete production on September 16, more than three weeks beyond the due date.

OTHER TAX-EXEMPT GROUPS

Other tax-exempt organizations that may have engaged in improper and/or illegal campaign activities:

- o Citizens Against Government Waste;
- o The Heritage Foundation;
- o The Coalition: Americans Working for Real Change;
- o American Defense Institute/American Defense Foundation;
- o Citizens for a Sound Economy;
- o Women for Tax Reform;
- o The National Right to Life Committee;
- o The Christian Coalition.

Citizens Against Government Waste

Citizens Against Government Waste (“CAGW”) is a 501(c)(3) organization.³⁰ It has been reported to be under investigation by the IRS for allegedly engaging in improper political activities.³¹ The Minority believes CAGW may have engaged in partisan activity, exceeded limits on nonpartisan campaign activity, misled the IRS in its application for tax-exempt status, failed to register as a political committee, improperly coordinated expenditures, and circumvented federal campaign spending limits.

CAGW, like a number of other not-for-profit organizations, apparently paid for mailings and provided the Dole campaign with donor lists after Dole signed a fundraising letter for the group.³² In addition to the potential violation of the tax laws, such activities might also constitute

an illegal in-kind contribution to the Dole campaign. An estimated ten million letters were mailed by Heritage, CAGW, and a small number of other groups at a reported postage cost of \$80,000 per million letters.³³ Additionally, the donor lists may have been worth \$40,000 or more to the Dole campaign.³⁴

Citizens Against Government Waste made two small, incomplete productions on September 8 and 9 -- three weeks beyond the due date.

The Heritage Foundation

The Heritage Foundation is registered with the IRS as a 501(c)(3) charitable organization, meaning that contributions to it are tax-deductible and that the organization is strictly forbidden to engage in partisan campaign activity. Heritage is being investigated by the IRS for allegedly engaging in improper political activities.³⁵ The Minority believes that Heritage may have exceeded limits on political activity, misrepresented facts to obtain tax exempt status, failed to register as political committee, improperly coordinating expenditures, and circumvented federal campaign spending limits.

As noted above, Heritage, like a number of other not-for-profit organizations, apparently paid for mailings and provided the Dole campaign with donor lists after Dole signed a fundraising letter. The letter was mailed in 1995 on Dole's letterhead at Heritage's expense. In it, Dole said, "I want to get Washington off your back and out of your pocket."³⁶ In addition to the potential violation of the tax laws, such activities might also constitute an illegal in-kind contribution to the Dole campaign. As noted earlier, an estimated ten million letters were mailed by Heritage, CAGW, and several other groups at a reported postage cost of \$80,000 per million letters.³⁷ Additionally, the donor lists may have been worth \$40,000 or more to the Dole campaign.³⁸

On August 15, one week early, the Heritage Foundation produced two volumes of documents consisting primarily of publicly available material. Heritage supplemented this production on August 25.

The Coalition: Americans Working for Real Change

The Coalition: Americans Working for Real Change ("Coalition") is composed of approximately 30 business organizations, including the U.S. Chamber of Commerce and the National Association of Manufacturers.³⁹ The Minority believes the Coalition may have engaged in partisan activity, failed to register as a political committee, improperly coordinated expenditures, improperly engaged in issue advocacy, and circumvented federal campaign spending limits.

According to its spokesman, the Coalition was formed to counterbalance issue ads run by the AFL-CIO.⁴⁰ To do so, it reportedly spent at least \$4.5 million, supported 23 Republican incumbents, and criticized the voting records of four Democrats in tight races.⁴¹ The Coalition's ads also contained nearly identical language to that used in ads broadcast by the National

Republican Congressional Coalition (“NRCC”), a division of the RNC. In addition, the Coalition’s ads were run at the same time as the NRCC’s ads and in districts where the Republican incumbent’s seat was vulnerable.⁴² Although the Coalition’s ads avoided the so-called “magic words” of express advocacy, the ads are a prime example of partisan activities by a nonprofit organization.⁴³ In addition, there are indications that the Coalition was primarily engaged in political activities, meaning that it should have complied with the registration and reporting requirements of the Federal Election Campaign Act (“FECA”).⁴⁴

The Coalition and the U.S. Chamber of Commerce forwarded written objections to the Committee’s subpoena on September 16, three weeks beyond the return date on the subpoena. They never complied with the subpoena.⁴⁵

American Defense Institute/American Defense Foundation

The American Defense Institute (“ADI”) and the American Defense Foundation (“ADF”) are tax-exempt organizations operated from the same offices under the same management. The difference between the organizations is that ADI is a 501(c)(3) and ADF is a 501 (c)(4).⁴⁶ Press reports indicate these organizations have both received large sums of money from the RNC and the National Republican Senatorial Committee (“NRSC”), a division of the RNC, shortly before election cycles, including special elections.⁴⁷

ADI and ADF conduct get-out-the vote drives aimed at military personnel through mailings and “public service announcements.” ADI received \$600,000 from the RNC in the last election cycle.⁴⁸ ADI had received similar contributions in 1992 and been criticized for its assistance to Republican candidates, leading it to return the money, but not until just after it had received \$530,000 from six individual donors funneled through the RNC.⁴⁹ In short, the allegation is that the ADI/ADF were used by the RNC during the 1996 election cycle to conduct election-related activities after the RNC has “maxed out” in a particular state.

ADI/ADF requested clarification instructions on September 5, two weeks beyond the required due date, but never produced any documents.⁵⁰

Citizens for a Sound Economy

Citizens for a Sound Economy (“CSE”) is a 501(c)(4) chaired by C. Boyden Gray, former White House Counsel in the Bush Administration. CSE was founded in 1984 as a think tank and grass-roots organization, and while the group has a number of members, most of its funding comes from a few major corporations, including foundations associated with the Koch family of Kansas. Koch interests gave more than \$8 million to CSE and contribute on average \$750,000 annually.⁵¹ The Minority also believes that the Kochs have been important supporters of Triad, which is discussed in Chapter 12 in this Minority Report.

CSE also reportedly cultivated close ties with the Republican leadership. According to press reports, former Majority Leader Bob Dole’s Better America Foundation gave CSE \$50,000

in 1995. Dole also signed a fundraising letter for the group. In return, CSE provided Dole with its contributors' names.⁵² CSE also joined forces with House Majority Leader Richard K. Armey on the flat-tax bill in 1995 who "estimated CSE would spend about \$2 million on the campaign."⁵³

Citizens for a Sound Economy made two small, incomplete productions on September 12 and 15 -- three weeks beyond the due date.

Women for Tax Reform

Women for Tax Reform ("WTR") was formed in August 1996 as an affiliate of Americans for Tax Reform, a nonprofit organization run by Republican activist Grover Norquist (see Chapter 11). The Minority believes that WTR may have engaged in partisan activity, exceeded limits on nonpartisan campaign activity, misrepresented facts to obtain tax-exempt status, failed to register as a political committee, improperly coordinated expenditures, and engaged in express advocacy on behalf of Republican candidates.

The Minority's investigation of ATR produced evidence that WTR worked in concert with ATR to organize its activities to evade election laws in violation of ATR's and WTR's tax-exempt status. WTR has the same office address and some of the same officials as Americans for Tax Reform.⁵⁴

On April 1, the Minority submitted a draft subpoena for WTR documents. A final subpoena was issued on July 30. On October 3, WTR made a limited production of 149 pages of documents along with a letter stating that the documents were produced "voluntarily and purely as a matter of grace, not because WTR believes that any of the documents produced are called for by the subpoena...."⁵⁵ The attorney, Thomas Wilson, used similar language when he produced ATR documents. WTR made a small, incomplete production on October 3 -- six weeks beyond the due date.

National Right to Life Committee

The National Right to Life Committee ("NRLC") is a tax-exempt organization which received \$650,000 in 1996 from the Republican National Committee⁵⁶ and may have received additional donations in previous cycles that were apparently used for political activity (e.g. voter guides, GOTV). For example, in November, 1994, Senator Phil Gramm authorized a \$175,000 donation from the National Republican Senatorial Committee to the NRLC in order to "help activate pro-life voters in some key states where they would be pivotal to the [1994] election."⁵⁷ Furthermore, Senator Dole's Better America Foundation donated \$125,000 to the NRLC one day before the 1994 elections.⁵⁸

NRLC produced three boxes of documents, but did not fully comply with the subpoena. On September 3, the group joined six others to object to its subpoena.⁵⁹

The Christian Coalition

The Christian Coalition has operated for nearly a decade as a 501(c)(4), although the IRS has not granted final approval for its tax-exempt status. The Christian Coalition is ostensibly operated as a social welfare organization dedicated to informing the public about Christian values. In fact, it actively strongly support the conclusion that it is in fact a partisan political organization that operates on behalf of Republican candidates, as discussed in Chapter 14 of the Minority Report.

The Minority first proposed a subpoena for the Christian Coalition on March 3, but issuance was not approved by the Committee until July 30. The Christian Coalition did not comply with the subpoena and joined several other organizations in September in objecting to Committee subpoenas.⁶⁰

PRIVATE CORPORATIONS LINKED TO CONTRIBUTION-LAUNDERING

Private corporations linked to illegal schemes to launder contribution to Republican candidates:

- o DeLuca Wine & Liquors, and
- o Empire Landfill.

DeLuca Liquor & Wine and Empire Landfill, Danella Inc./USA Waste Services of Eastern Pennsylvania

Various Republican donors involved in schemes to launder contributions through employees, including DeLuca Liquor and Wine (“DeLuca”) and Empire Landfill (“Empire”), which are discussed in Chapter 22, led the Minority to recommend that these entities be further investigated by the Committee.

The Committee issued a subpoena to DeLuca, which produced a single folder containing 27 pages of documents on August 25 -- three days beyond the due date.⁶¹ The folder contained a corporate organizational chart as well as copies of canceled checks from DeLuca to five employees and canceled checks from those employees and their wives payable to “Dole for President.” Although the production was limited, the materials raise numerous questions which are explained in Chapter 22 of the Minority Report.

The Committee subpoenaed Empire Landfill’s former president, Renato Mariani. Mariani did not produce documents to the Committee upon asserting his Fifth Amendment right against self incrimination.

ORGANIZATIONS SUGGESTED FOR SUBPOENA BY THE MAJORITY

The groups that the Majority subpoenaed on July 30 comprise three broad categories:

1. Those affiliated in some way with the labor movement or linked in some way to allegations against the labor movement:
 - o National Council of Senior Citizens
 - o Citizen Action
 - o National Education Association
2. Those named by Harold Ickes in a memo to Warren Meddoff (see Chapter 17):
 - o Vote Now '96
 - o Campaign to Defeat 209
3. Those traditionally affiliated with Democratic causes or issues:
 - o The Sierra Club
 - o Democratic Leadership Council
 - o EMILY's List
 - o The National Committee for an Effective Congress
 - o American Trial Lawyers' Association
 - o Americans United for the Separation of Church and State

The subpoenas to groups in the first two categories were justified, but at least some of the groups in the third category were apparently targeted by the Majority simply because they have historically been more philosophically aligned with the Democratic Party. The Minority is aware of no evidence that any of these organizations were involved in illegal or improper activities in the 1996 election.

Among other things, all of the subpoenas demanded organizational and financial information; documentation of the organizations' tax-exempt status; membership lists; telephone numbers; information on get-out-the-vote activities, issue and campaign advertising, and public opinion polls; information on money transfers to and from foreign principals; information on transfers of or solicitations for anything of value to or from federal candidates, campaigns, or political parties; information on how the organizations allocated their funds to candidates;

information on any interaction with any combination of other entities subpoenaed by this Committee; and anything relating to communications with the FEC. Some subpoenas also demanded information on certain events held by organizations; refunds of fees or dues for political or voter education activities; and records of election activities.⁶²

National Council of Senior Citizens

Federal prosecutors alleged that the National Council of Senior Citizens (“NCSC”) was linked to a scheme to launder money to the reelection campaign of Teamsters’ President Ron Carey. The prosecutors made this allegation in a criminal information filed in United States District Court for the Southern District of New York in connection with the guilty plea of Martin Davis, a political consultant who provided services to Teamsters For A Corruption Free Union (“TCFU”). Davis, a central figure in the scheme, headed a firm called the November Group.⁶³ According to prosecutors, Davis and Jere Nash, a political consultant for TCFU who provided direct-mail services, and Michael Ansara, another political consultant for TCFU, all arranged for the Teamsters to contribute \$85,000 to the NCSC, which then sent the sum to the November Group, a company responsible for executing the Carey direct mail campaign. Part of the money paid to the November Group by the NCSC was funneled by Davis into the Carey campaign in order to finance the direct mail campaign.

In response to the Committee’s subpoena, NCSC produced a small number of documents. However, it joined with other nonprofit organizations on September 3 in filing a formal objection to the Committee subpoena.⁶⁴

NCSC provided a list of the documents that were and were not produced, as well as justifications for its refusal to produce certain documents, including the assertion that the subpoena violated the First and Fourth Amendments and was beyond the mandated scope of the investigation. Information sent to the Committee pursuant to the subpoena included: organizational and financial materials; telephone and communications records and directories; Internal Revenue Service materials pertaining to organization’s tax-exempt status; and Federal Election Commission reports.

NCSC did not produce information on communications with the Political Action Transition Work Group of the AFL-CIO, other tax-exempt entities, and the FEC; information relevant to the allocation of funds for political purposes; information related to political advertising and advocacy; and copies of the organization’s political mailings and documents related to get-out-the-vote drives.

Citizen Action

Citizen Action is a grassroots consumer advocacy group registered with the IRS as a 501(c)(4). In October 1997, it closed its Washington, D.C. national office, but it continues to operate field offices in several states. The allegations against Citizen Action are summarized in Chapter 19 of this Report. Beyond issuing a document subpoena, the Committee did not

investigate Citizen Action. Citizen Action joined with seven other non-profit organizations and filed a formal objection to Committee subpoenas on September 3. The letter listed the following grounds for objection: the subpoenas 1) exceeded the investigative authority of the Committee; 2) demanded the production of sensitive documents that are protected under federal law due to their confidentiality; 3) were "overly broad, unduly burdensome, and oppressive"; and 4) "violate[d] the First Amendment rights of the subject organizations and their members."⁶⁵

After filing this objection, Citizen Action produced approximately 70 to 80 pages of material. The documents included information on the organizational structure of Citizen Action and copies of voter education materials distributed during the 1996 campaign cycle, including voting records of candidates and newspaper articles. No one affiliated with Citizen Action was deposed by the Committee.

National Education Association

The National Education Association ("NEA") is one of the largest labor organizations in the United States and is a member of the AFL-CIO. It has generally backed Democratic candidates, including President Clinton in his bid for re-election in 1996. There were no clear allegations made against the NEA by the Majority.

The NEA sent a letter to the Committee on August 11, stating that it would be unable to meet the August 22 return date in the Committee's subpoena, although the letter noted that the NEA had begun the process of attempting to locate responsive documents. The letter also asserted the NEA's "serious concerns" about the scope of the subpoena, including possible infringement of the organization's First Amendment rights of free speech and free association. The NEA requested a meeting with the Committee to address these issues, but the Majority's lawyers never scheduled one.⁶⁶

On August 20, the general counsel to the NEA sent a letter to the Committee joining the legal objections filed by other groups, stating that the NEA would not comply further with the subpoena until its objections -- and the joint objections -- were addressed by the Committee.⁶⁷ The Majority did not respond to that letter. Pursuant to the position it stated in its August 20 letter, the NEA did not produce any documents to the Committee. The Committee did not seek to schedule the depositions of any witnesses affiliated with the NEA.

Vote Now '96

Vote Now '96 is a Florida-based project of Citizen Vote, Inc., a 501(c)(3) organization headquartered in New York that spearheads voter registration drives, especially in minority communities.⁶⁸ Vote Now '96 raised money and made grants to other 501(c)(3) organizations involved in voter registration drives.⁶⁹ In 1996, it raised and distributed \$3 million for voter registration.⁷⁰ There were a number of allegations concerning Vote Now '96 which are explained in Chapter 19. In general, however, the allegations were that DNC and White House officials improperly directed money to Vote Now '96.

Vote Now `96 is the only one of the 501(c)(3) and 501(c)(4) entities subpoenaed that appears to have fully complied with the demands of the Committee. It produced 726 pages of documents which were responsive to the subpoena,⁷¹ and two members of the Vote Now `96 board voluntarily appeared for depositions.⁷² Vote Now `96, under the name of its parent group Citizens Vote, also produced two small sets of documents to the Committee in compliance with the subpoena.

The documents indicate that Vote Now `96 complied with applicable laws. The activities it undertook were nonpolitical voter registration activities that were appropriate for a 501(c)(3) organization. Review of the documents, corroborated by deposition testimony, indicates that in evaluating grant proposals from 501(c)(3) organizations that conducted voter registration, Vote Now `96 properly denied grants to organizations that acted in a partisan fashion.⁷³ No evidence of partisan activity appears in any of the awarded grant documents.

Campaign to Defeat Proposition 209

Campaign to Defeat 209 is a nonprofit organization that lobbied to defeat the California Civil Rights Initiative (“CCRI”). It was one of three organizations suggested by Harold Ickes to Warren Meddoff as a possible recipient of contributions from Meddoff’s business associate, William Morgan (see section on Vote Now `96, above, and Chapter 17). Campaign to Defeat 209 produced a small, incomplete number of documents to the Committee.

The Sierra Club

The Sierra Club is a well-known nonprofit entity that advocates environmental protection and resource conservation and lobbies for pro-environment legislation. Its causes have been historically supported by Democrats, and it continues to be an active participant in the political process. During the 1996 cycle it spent more than \$7.5 million on media and grassroots electoral activity, targeting primarily anti-environmental members of Congress.⁷⁴ There were no clear allegations leveled against the Sierra Club by the Majority.

The Sierra Club produced several boxes of material, including video and audio tapes, magazines, personal correspondence and posters, but did not attempt to produce all documentation requested. Little attention was paid to the Sierra Club during the investigation, as it did not appear that it was an especially important entity in the 1996 federal election campaign cycle. No representatives of the Sierra Club were interviewed or deposed by the Committee.

Democratic Leadership Council

The Democratic Leadership Council (“DLC”) is a nonprofit organization that is identified with the moderate wing of the Democratic Party. During the course of the investigation, no allegation was made that the DLC has ever been involved in improper or illegal conduct in connection with the federal elections of 1996.

The DLC produced a relatively small number of documents, but did not respond completely to the subpoena, and the Committee did not pursue the issue.

EMILY’S List

EMILY’s List is a political action committee (“PAC”) that contributes mainly to female Democratic candidates. In response to the subpoena, EMILY’s List did not fully respond to the subpoena, but did produce two sets of documents contained in 14 boxes. The Majority never made any clear allegations against EMILY’s List.

National Committee for an Effective Congress

The National Committee for an Effective Congress (“NCEC”) is a “Democratic political action committee that primarily supplies sophisticated voter targeting information to the party’s congressional candidates.”⁷⁵ In response to the subpoena, the NCEC produced one box of documents, including copies of mailings and other related materials produced during the 1996 election cycle. There were no clear allegations leveled against the NCEC by the Majority.

American Trial Lawyers Association

The American Trial Lawyers Association (“ATLA”) is a nonprofit, 501(c)(4) organization that also functions as a political action committee, donating mainly to Democratic candidates. In fact, it serves as one of the largest Democratic political action committees. It received explicit permission in FEC Advisory Opinion 96-02 (1996) to endorse congressional candidates and request that members make campaign contributions to the endorsed candidates while identifying themselves as ATLA members. There were no clear allegations made against ATLA made by the Majority.

ATLA produced documents to the Committee on two occasions. It provided the Committee with contribution lists, telephone records, and other documentation regarding the political activities of the organization with respect to both Democratic and Republican candidates. These documents contain no indications that the organization engaged in illegal or improper activities during the 1996 election cycle. On September 3, ATLA joined the group of entities that had previously objected to the Committee’s subpoenas.⁷⁶ After this objection was filed, ATLA no longer complied with the Committee’s requests for information.

Americans United for Separation of Church and State

Americans United for the Separation of Church and State (“Americans United”) is a 501(c)(4) organization which styles itself as a national church-state watchdog group.⁷⁷ Americans United complied with the Committee’s subpoena and produced a small set of documents.

There is no indication of any kind of coordination between Americans United and any other organizations to influence the outcome of the elections during the 1996 federal election cycle. It appears that Americans United was targeted by the Majority in order to conduct a fishing expedition into the activities of organizations that support Democratic issues.

CONCLUSION

The Majority's unwillingness to grant Minority subpoenas -- and its steadfast refusal to enforce the limited number that were eventually granted -- call into question the Majority's pledge to conduct a bipartisan investigation.

Allowing witnesses to continually flout the Committee's process with impunity sets a troubling precedent for future Senate investigations. As Senator Joseph Lieberman noted: "We are the people's representatives. We are the people's opportunity to find the facts to search for the truth, and when parties that we subpoena are asked for information, do not cooperate, it is an insult to the Congress, and it sets a precedent that is not one that we should accept."⁷⁸

Beginning in April 1997, when Republican affiliated groups began to openly defy the Committee's subpoenas, more entities followed suit in August and September. In total, well over 30 organizations refused to comply to subpoenas validly issued by the Committee. The Minority repeatedly appealed to the Majority to enforce the outstanding subpoenas to no avail. For example, when on October 9, Senator Carl Levin asked the Committee to enforce outstanding subpoenas, Chairman Thompson replied: "I am not going to entertain that today."⁷⁹ Two days earlier, the Chairman opined:

It's well known that the Senate imposed a cut-off date on this Committee. It's also been a very badly kept secret that people are now systematically thwarting our subpoenas, not responding to this Committee because they know that by the time we get through the contempt proceedings and into court, our cut-off date will have arrived. That is the sad truth, but it must be acknowledged.⁸⁰

Furthermore, the Chairman said the following day, "We will make an additional effort to [enforce the Minority subpoenas] when you get the AFL-CIO to comply with the subpoenas we issued them."⁸¹

These rationales do not justify the Majority's consistent failure to enforce the outstanding subpoenas issued by this Committee. First, the entire Senate, not simply the Democratic members, voted 99-0 to impose the December 31 deadline. The mere fact that a deadline exists does not per se mean that enforcement is unrealistic. To do nothing assures failure.

Second, the statement about the AFL-CIO's lack of compliance is a red herring. The Minority was willing to order all organizations, including the AFL-CIO, to comply. The AFL-CIO did produce ten boxes of documents. If the Majority was dissatisfied with the quality of this production the remedy was not abdication of the Committee's responsibilities but rather institution of contempt proceedings. The Minority agreed to vote to impose contempt on any

group or individual that thwarted the Committee's valid authority process, but the Majority declined to take any action.⁸²

NOTES

1. Subpoenas requested by the Minority: Republican Exchange Satellite Network, # 301; Better America Foundation, # 299; American Cause, # 300; Citizens Against Government Waste, # 307; the Heritage Foundation, # 306; U.S. Chamber of Congress (Coalition for Change), # 304; American Defense Institute and American Defense Foundation, #'s 294 & 295; Citizens for a Sound Economy, # 297; Women for Tax Reform, # 305; National Right to Life Committee, # 296; Christian Coalition, # 298; DeLuca Liquor and Wine, Ltd., # 302; Renato Mariani (Empire Sanitary Landfill), # 303. Subpoenas requested by the Majority: AFL-CIO, # 95; National Council of Senior Citizens, # 285; Citizen Action, # 286; National Education Association, # 283; Vote Now, # 282; Campaign to Defeat 209, # 288; Sierra Club, # 287; Democratic Leadership Council, # 289; EMILY's List, # 290; National Committee for an Effective Congress, # 291; American Trial Lawyers Association, # 292; Americans United for the Separation of Church and State, # 293.

2. Letter to Majority and Minority Chief Counsels from the Association of Trial Lawyers of America, Christian Coalition, Citizen Action, Citizens Against Government Waste, International Brotherhood of Teamsters, National Council of Senior Citizens, and National Right to Life Committee declaring their objections to subpoenas issued by the Committee, 9/3/97.

3. Letter to attorneys James Bopp, Jr. and Alan Dye from Minority Counsel, following up on a September 3 meeting with the Christian Coalition attorneys concerning the Christian Coalition's response to the Committee's July 30 subpoena, 9/8/97.

4. Subpoena to the AFL-CIO, # 95.

5. Simultaneously, the AFL-CIO produced two boxes of documents containing what it said were copies of public records that the organization had filed with the Internal Revenue Service, the Federal Election Commission, and the U.S. Department of Labor, as well as a variety of materials generated by the AFL-CIO for political purposes, including tapes of advertisements sponsored by the organization. Letter to Senators Thompson and Glenn from counsel for AFL-CIO enclosing a "memorandum of legal authorities and principles in support of the AFL-CIO's objections to the document subpoena," 8/20/97.

6. Appendix to Memorandum of Points and Authorities in Support of AFL-CIO's Objections to Document Subpoena, 8/20/97.

7. Chairman Thompson, 10/9/97, Hrg. pp. 198-199.

8. Subpoenas to Gerald Shea, # 399; Richard Trumka, # 400; and Steve Rosenthal, # 401.

9. Letter to Majority and Minority Chief Counsels from the Association of Trial Lawyers of America, Christian Coalition, Citizen Action, Citizens Against Government Waste, International Brotherhood of Teamsters, National Council of Senior Citizens, and National Right to Life Committee declaring their objections to subpoenas issued by the Committee, 9/3/97.

10. Washington Post, 12/30/95.
11. Washington Post, 12/30/95.
12. Washington Post, 12/30/95.
13. Chattanooga Free Press, 6/22/95; Washington Post, 12/30/95.
14. Chattanooga Times, 2/28/95.
15. Chattanooga Times, 2/28/95.
16. Washington Post, 6/18/95, 8/20/96; Kansas City Star, 6/22/95; 2 U.S.C. 433 & 434 (1997).
17. New York Times, 1/28/96; USA Today, 2/28/96.
18. Roll Call, 11/7/94.
19. Associated Press, 11/2/95.
20. Associated Press, 11/2/95.
21. Chicago Tribune, 5/26/95; see e.g., letter to Jo-Anne Coe from Yong Kim, Chairman of Y.Y.K. Enterprises, Inc., concerning a refund check Kim received from Better America Foundation, 8/17/95.
22. 2 U.S.C. 441b (1997).
23. Kansas City Star, 6/22/95.
24. Brochure for Better America Foundation.
25. Washington Post, 6/21/95.
26. Washington Post, 6/18/95.
27. Washington Post, 6/7/95.
28. AP Online, 4/19/96.
29. New York Times, 3/4/96.
30. 501(c)(3) organizations are tax-exempt and are incorporated as charitable entities and barred by law from participating in political campaigns. They may engage in lobbying as defined by statutory limitations and can establish 501(c)(4) organizations to lobby freely. 26 U.S.C. 501(c)(3) & (4) (1997); 2 U.S.C. 441b (1997).

31. Chicago Tribune, 1/12/97.
32. Orange County Register, 5/25/96.
33. Orange County Register, 5/25/96.
34. Orange County Register, 5/25/96.
35. Chicago Tribune, 1/12/97.
36. Chicago Tribune, 1/12/97.
37. Orange County Register, 5/25/96.
38. Orange County Register, 5/25/96.
39. Advertising Age, 10/14/96; Pittsburgh Post-Gazette, 11/3/96.
40. Washington Post, 11/23/97.
41. Washington Post, 11/23/97; U.P.I., 10/28/96.
42. U.P.I., 10/28/96.
43. Examples of phrases constituting express advocacy were provided by the Supreme Court in footnote 52 of the Court's landmark decision in Buckley v. Valeo. The terms are commonly referred to as the "magic words" and include "'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'" 424 U.S. 1, 44 (1976).
44. 2 U.S.C. 431(4), 433, and 434 (1997).
45. Letter to Majority and Minority Chief Counsels from Jan Witold Baran, representing the Coalition: Americans Working for Real Change, enclosing a "Memorandum of Points and Authorities in Support of the Coalition's Objections to Document Subpoena," 9/16/97.
46. 501(c)(4) organizations are incorporated as social welfare organizations. Contributions to these organizations are not tax-deductible, however, the organization's revenues are tax-exempt. These organizations have no limitations on the amount of lobbying in which they can engage, and can participate in politics so long as the organization does not expressly advocate the election or defeat of a candidate. 26 U.S.C. 501(c)(4).
47. Atlanta Journal, 12/21/97; Hotline, 10/23/97.
48. Washington Post, 10/23/97.
49. Washington Post, 12/10/96 and 10/23/97.

50. Letter to Chairman Fred Thompson from Richard Hauser regarding the “American Defense Institute/ American Defense Foundation,” 9/5/97.
51. National Journal, 7/13/96.
52. National Journal, 7/13/96.
53. National Journal, 7/13/96.
54. See Chapter 11.
55. Letter to Majority Chief Counsel, from Thomas Wilson, Council for Women for Tax Reform, regarding WTR’s response to the Committee’s subpoena, 10/2/97.
56. Washington Post, 12/10/96.
57. New York Times, 3/1/95.
58. Associated Press, 6/21/95.
59. Letter to Majority and Minority Chief Counsels from the Association of Trial Lawyers of America, Christian Coalition, Citizen Action, Citizens Against Government Waste, International Brotherhood of Teamsters, National Council of Senior Citizens, and National Right to Life Committee declaring their objections to subpoenas issued by the Committee, 9/3/97.
60. Letter to Majority and Minority Chief Counsels from the Association of Trial Lawyers of America, Christian Coalition, Citizen Action, Citizens Against Government Waste, International Brotherhood of Teamsters, National Council of Senior Citizens, and National Right to Life Committee declaring their objections to subpoenas issued by the Committee, 9/3/97.
61. Letter to Minority Counsel from Kenneth A. Gross of Skadden Arps, attorney for DeLuca Liquor & Wine, Ltd., in response to subpoena, 8/21/97.
62. Such information is requested in subpoenas to Vote Now (#282), the National Council of Senior Citizens (#285), Sierra Club (#287), Democratic Leadership Council (#289), and National Committee for an Effective Congress (#291).
63. See United States v. Davis, U.S.D.C., S.D.N.Y.
64. Letter to Majority and Minority Chief Counsels from the Association of Trial Lawyers of America, Christian Coalition, Citizen Action, Citizens Against Government Waste, International Brotherhood of Teamsters, National Council of Senior Citizens, and National Right to Life Committee declaring their objections to subpoenas issued by the Committee, 9/3/97.
65. Letter to Majority and Minority Chief Counsels from the Association of Trial Lawyers of America, Christian Coalition, Citizen Action, Citizens Against Government Waste, International

Brotherhood of Teamsters, National Council of Senior Citizens, and National Right to Life Committee declaring their objections to subpoenas issued by the Committee, 9/3/97.

66. Letter to James Brown and Pam Marple from Richard Wilkof, Counsel for NEA, regarding National Education Association's response to the subpoena, 8/11/97.

67. Letter to Senators Thompson and Glenn from Robert Chanin, General Counsel for NEA, regarding National Education Association's response to the subpoena, 8/20/97.

68. Washington Post, 11/22/97.

69. Hugh Westbrook deposition, 9/29/97, p. 13.

70. New York Times, 9/20/97.

71. Subpoena for Vote Now, # 282.

72. Former Vote Now '96 Executive Director Gary Barron was deposed by the Committee on September 30. Hugh Westbrook, former chairman of the organization, was deposed by the Committee on September 29. Mention of this organization and its ties to Meddoff, organized labor, and the DNC also appears in sworn deposition testimony of Harold Ickes, Warren Meddoff, Karen Hancox, Richard Sullivan, Marvin Rosen, Mark Thomann, and Donald Fowler. Information linking Vote Now '96 to the Judith Vasquez contribution appears in the deposition testimony of Noah Novorodsky, a summer associate at the law firm at Jackson, Tufts, Cole & Black, the firm that represented Vasquez, and the interview of Twyla Foster, a partner at the same firm that supervised Novorodsky. Both were involved in the transaction.

73. Gary Barron deposition, 9/30/97, pp. 26-27.

74. The Annenberg Public Policy Center, "Issue Advocacy During the 1996 Campaign: A Catalogue," 9/16/97.

75. National Journal, 7/1/95.

76. Letter to Majority and Minority Chief Counsels from the Association of Trial Lawyers of America, Christian Coalition, Citizen Action, Citizens Against Government Waste, International Brotherhood of Teamsters, National Council of Senior Citizens, and National Right to Life Committee declaring their objections to subpoenas issued by the Committee, 9/3/97.

77. Richmond Times Dispatch, 7/3/97.

78. Senator Lieberman, 10/7/97, Hrg. p. 41.

79. Senator Thompson, 10/9/97, Hrg., p. 196.

80. Senator Thompson, 10/7/97, Hrg., p. 4.

81. Senator Thompson, 10/8/97, Hrg., p. 65.

82. Senator Glenn, 10/8/97, Hrg., p. 73.